

## **REMARKS / ARGUMENTS:**

The remarks below are in response to the non-final Office Action mailed April 15, 2009. Applicants, having fully considered the issues raised therein, and in view of the following remarks, request reconsideration of the application. Withdrawal of the rejections and issuance of a Notice of Allowance are specifically requested.

### **Non-statutory Obviousness-type Double Patenting**

The Examiner provisionally rejected Claims 103, 106, 108, 109, 112, 117, 135, 138, 140, 142, 143, 153, and 155 – 158 on the ground of non-statutory obviousness-type double patenting. Applicants submit the Terminal Disclaimer filed July 24, 2009 renders this rejection moot.

### **Claim Rejections – 35 U.S.C. § 112, First Paragraph**

The Examiner rejected Claims 103, 106, 108, 109, 112, 117, 135, 138, 140, 142, 143, 153, and 155 – 158 under 35 U.S.C. § 112, first paragraph, as being unpatentable for failing to comply with the written description requirement. Applicants respectfully traverse the rejection.

According to the Examiner, the recitation of beans selected from the genera *Vigna*, *Glycine*, *Vicia*, and *Phaseolus* not being affected by Take-all disease is new matter. Applicants maintain their previously-filed traversal of this rejection.

Nevertheless, and solely for the purposes of furthering prosecution, Claim 103 is amended to remove the recitation "...that is not affected by Take-All disease..." Support for the amended claim may be found at least at Claim 29 as originally filed and Page 16, lines 3 – 13. The specification clearly provides a written description supporting the presently amended Claim.

Applicants submit this amendment overcomes the written description rejection. Withdrawal of the rejection is, therefore, respectfully requested.

## **Conclusion**

Applicants submit that, in view of the above remarks, the application is in condition for allowance. Withdrawal of the rejections and issuance of a Notice of Allowance is, therefore, respectfully requested.

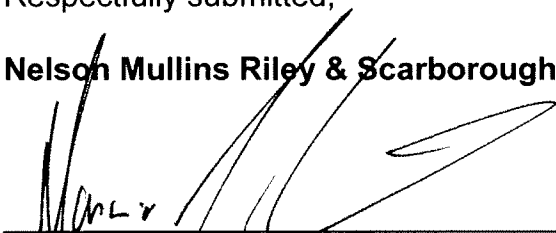
It is believed that no fees are due in conjunction with the filing of the present response. If, however, it is determined that fees are due, authorization is hereby given to deduct those fees from Deposit Account No. 50-2548.

If one or more of the claims are found to not be allowable, a telephone call to the undersigned would be appreciated in order to resolve any remaining issues.

Respectfully submitted,

**Nelson Mullins Riley & Scarborough, LLP**

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